

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

NOTICE OF MOTION

UNITED STATES OF AMERICA

v.

Docket no. 16-CR-94-LJV-MJR

JOSEPH KUROWSKI,

Defendant.

MOTION BY:

Andrew C. LoTempio, Attorney

DATE, TIME & PLACE:

Before the Hon. Michael J. Roemer., United States Magistrate Judge, United States Courthouse, 2 Niagara Square, Buffalo, New York, as soon as counsel can be heard.

SUPPORTING PAPERS:

Affirmation of Andrew C. LoTempio, dated, November 22, 2016.

RELIEF REQUESTED:

Suspension of the Entry of a Plea after Allocution, or release of Defendant pending sentence pursuant to 18 USC 3143; and, for such other further relief as the court may deem just and proper.

DATED: **November 22, 2016**
 Buffalo, New York

/s/ Andrew C. LoTempio
Andrew C. LoTempio, Esq.
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To: Hon. Michael J. Roemer
 United States Magistrate Judge

Aaron J. Mango, Esq.
Assistant United States Attorney

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

AFFIDAVIT

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Docket no. 16-CR-94-LJV-MJR

JOSEPH KUROWSKI,

Defendant.

STATE OF NEW YORK)
)ss:
COUNTY OF ERIE)

ANDREW C. LoTEMPIO, Esq., affirms the following to be true under penalty of perjury:

1. I am an attorney at law and represent the Defendant, Joseph Kurowski, in the above captioned matter.
2. That a Plea Agreement has been negotiated on the Defendant's behalf.
3. That the negotiated plea, under the above mentioned Plea Agreement, will be to a violation of 18 USC 2252A(a)(5)(B), Possession of Child Pornography. A plea has been scheduled for November 30, 2016, at 9:00 am, before this Court.
4. Pursuant to 18 USC 3156(a)(4)(C), detention is mandatory after the Defendant's plea is entered.

5. Defendant herein maintains that there are exceptional circumstances and clear and convincing evidence that the Defendant is not likely to flee or pose a danger to the safety of another person or the community if released, under 18 USC 3143.

EXCEPTIONAL CIRCUMSTANCES

6. As a condition of Mr. Kurowski's pre-trial release, he has been monitored by probation. The conditions of his release have been quite stringent, including home confinement, counseling, removal of computers from his home, etc.

Furthermore, and more importantly, as a condition of his release, Mr. Kurowski has attended psychiatric counseling.

7. During his counseling sessions, various diagnoses have been made of Mr. Kurowski including depression and other issues (initial reports are attached and updates will be provided as they are received).
8. Unfortunately, Mr. Kurowski has exhibited some self-destructive behavior and has made comments indicating suicidal ideations. He has, however, remained completely compliant with all counseling and has been progressing successfully.
9. Defendant maintains that continued counseling provides exceptional circumstances. Rather than incarcerating Mr. Kurowski at this time, continued

counseling will serve both Mr. Kurowski and others in reaching just goals and the well-being of Mr. Kurowski and the community.

FLIGHT RISK / SAFETY TO THE COMMUNITY

10. Mr. Kurowski's family has posted bail on his behalf.
11. Again, Mr. Kurowski has been on house arrest and has been completely compliant with the mandates of his pre-trial release. He has made no attempt to flee the jurisdiction and there is no indication that he has moved outside of the house, etc., against the orders of the Probation Department.
12. Mr. Kurowski has not been caught with a computer nor has he made any verbal statements indicating that he has contacted any victim or any other young person via computer, etc.
13. There is nothing in his pre-trial release records that indicate that he is a danger to the community or others.

SENTENCING

14. At sentencing, your affiant intends on providing full and detailed explanations from Mr. Kurowski surrounding his behavior encompassed in the Indictment

along with psychiatric records.

15. For now, suffice it to say, there is no indication that Mr. Kurowski has been diagnosed as a pedophilic, or that he is even attracted to minors, sexually.
16. Although the Plea Agreement calls for jail sentence, it also allows for the defense to request a non-Guideline sentence.
17. Defendant will request that the Court consider that Mr. Kurowski needs to remain in counseling regardless of his sentencing and given his current suicidal ideations, we feel there are exceptional circumstances to allow for his continued release.

WHEREFORE, it is respectfully requested that the entry of the guilty plea be suspended until the time of sentence or that the Court find clear and convincing evidence and exceptional circumstances allowing for the Defendant's release pursuant to 18 USC 3143; and for such other and further relief as the Court may deem just and proper.

Dated: November 22, 2016

/s/ Andrew C. LoTempio
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